**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION.**
WRIT PETITION NO.7605 OF 2005

1. Smt Shantabai Murlidhar Rajput
and anr. .. Petitioners.

Vs

1. Smt Vithabai @ Jiskor .. .. Respondent.

Mr P.N.Joshi, for the petitioners.

**CORAM : D.B.BHOSALE,J.**
**DATE : 09.10.2006**

**PC:**

1. Heard the learned counsel for the petitioners.

2. This petition is directed against the order dated 20.8.2005, by which the application filed by the respondent at Exhibit-32 under Order 23,Rule 1 of CPC seeking permission to withdraw the Regular Civil Suit No.346 of 2000, with liberty to file a fresh suit, has been allowed. Mr Joshi, learned counsel for the petitioner, challenged the impugned order on the ground that no sufficient ground so as to satisfy the court for permitting the respondent-plaintiff to withdraw the suit with liberty to institute a fresh suit, was made out nor could the plaintiff satisfy the court that the suit would fail by reason of some formal defect. From perusal of the application, it appears that the respondent sought to withdraw the suit with permission to institute a fresh suit on the ground that had she

challenged the Gift deed, her suit would have exceeded the pecuniary limits of the court's jurisdiction before which the suit was pending. Mr Joshi, learned counsel for the petitioner, therefore, submitted that in any case the plaintiff could not have filed application at Exhibit - 32 without seeking an amendment of the plaint incorporating the challenge to the gift deed. I perused the order and the other material placed before me as also the judgment relied upon by Mr Joshi in K.S.Bhoopathy and ors vs Kokila and ors, AIR 2000 SC 2132. In my opinion, the court below has rightly allowed the application for the reasons stated in the order. Sub-rule (3) of rule 1 of Order 23 of CPC, provides that where the court is satisfied that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of a suit, it has a discretion to allow such application. In the original suit, the Gift deed was not challenged and the plaintiff had specifically stated in her application that she desired to challenge the same. There was no dispute that if the Gift deed was challenged, the suit would have exceeded the pecuniary limits of the court's jurisdiction before which it was filed. To my mind, the court has rightly exercised the jurisdiction. The order does not suffer from any infirmity warranting interference by this Court under Article 227 of the

Constitution of India. Moreover, it may be noticed that the suit has already been withdrawn and admittedly the respondent has filed a fresh suit before the appropriate court challenging the Gift deed. The order impugned was passed on 20.8.2005 and though the petition was filed immediately thereafter, no interim order was obtained by the petitioners till this date. The judgment relied upon by the petitioner, is of no avail. In the circumstances, this writ petition fails, and is dismissed as such.

3. Insofar as the merits of the case are concerned, all contentions are kept open to be raised in the fresh suit that has already been filed by the respondent-plaintiff.

(D.B.BHOSALE,J.)